IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2495 of 2002

Shri Kurka Parambali Apukutti Dasan .. Petitioner

versus

1. Shri Raghuveer C.Shetty & ors .. Respondents

Mr.Sanjiv Sawant for Petitioner

Mr T.S.Ingale for Respondent no.2

CORAM : D.G. KARNIK, J

DATED : 6th June 2005.

P.C.

1. Heard learned counsel for the petitioner and the respondent no.2. None present for other respondents. The respondent no.1 is the principal debtor and he borrowed a sum of Rs.84,000/- from the respondent no.2 bank for the purpose of purchase of a motor vehicle. The petitioner stood as a guarantor for the repayment of the said loan. The respondent no.1 did not make full repayment of the loan with interest. The respondent no. 2 bank obtained a recovery certificate against the respondent no. 1 and the petitioner under section 101 of the Maharashtra Coooperative Societies

Act. The petitioner was unsuccessful in revision and has therefore challenged the action of the respondent no.2 bank in this petition.

2. During the pendency of the petition, a settlement was reached between the parties under which the respondent no. 1 the principal debtor agreed to pay Rs. 40,000/-. the petitioner being one of the guarantor agreed to pay Rs.40,000/- and the respondent no. 3 being the second guarantor agreed to pay Rs.40,000/-. The respondent no. 1 bank agreed to discharge the petitioner by receiving Rs.40,000/.

3. The petitioner accordingly has deposited a sum of Rs.25,000/- with the respondent no. 2 bank. Learned counsel for the petitioner further states that the sum of Rs. 15,000/- has been deposited by the petitioner in this Court on 9th October, 2002 and copy of the receipt has been handed over to the learned counsel for the respondent no. 2. In view of this, the petitioner stands discharged as per the compromise agreement. Learned counsel for the respondent no.2 however, states that only the petitioner no.1 stands discharged and since the respondent no. 1 who is the principal debtor and the respondent no. 3 who is the second guarantor have not paid their dues, the respondent no. 2 bank is

free to recover the balance amount from them. This Court in this petition is not concerned with the liability of the respondent no.1 and respondent no. 3. It is not disputed that the petitioner stands discharged in view of the settlement reached with the respondent no.2 and payment made in pursuance thereof. Accordingly, the petition succeeds. The recovery certificate is quashed qua the petitioner only. The respondent no.2 is entitled to withdraw Rs.15,000/- deposited by the petitioner in this Court. It is clarified that this order would not come in the way of the respondent no. 2 in enforcing their right against the respondent no.1 and respondent no.3. Rule is made absolute in the aforesaid terms.

Authenticated copy allowed.

D.G.KARNIK, J

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